

GMN Tri County Community Action Committee, Inc. and Ohio Association of Public School Employees, AFSCME/AFL-CIO, Petitioner. Case 9-RC-15033

December 21, 1990

DECISION ON REVIEW AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND DEVANEY

On January 8, 1987, the Regional Director for Region 9 issued a Decision and Order in the above-entitled proceeding in which he declined to assert jurisdiction over the Employer. In accordance with Section 102.67 of the Board's Rules and Regulations, the Petitioner filed a timely request for review of the Regional Director's decision. By telegraphic order dated April 8, 1987, the Board granted the Petitioner's request for review.¹

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record, including the briefs, and makes the following findings.

The Employer is a private nonprofit Ohio corporation formed to administer antipoverty programs originating under the Economic Opportunity Act of 1964. It serves a three-county area in Ohio.² The Employer receives funds from Federal, state, and local government for such programs as Head Start, Job Training Partnership, Project Teach, Weatherization, Home Energy Assistance, and Senior Services. The approximately 25 employees in the petitioned-for unit are employed in the Employer's Head Start program, which is funded by the U.S. Department of Health and Human Services (HHS).

The facts on which this case turns are not in dispute. The Employer has incorporated into its bylaws various Federal³ and state laws⁴ that require the Employer to administer its programs through a tripartite board of directors. This board of directors is to be composed of one-third elected public or appointed officials, one-third representatives of the poor in the area served, and one-third officials or members of business, industry, labor, religious, welfare, education, or other major

groups and interests in the community.⁵ Here, the 18-member board of directors is composed of 6 members from each of the 3 groups. The public official members, the representatives of the poor, and the private sector members are selected in accordance with article VI, sections 6.2, 6.3, and 6.4,⁶ and 6.7, respectively, of the Employer's bylaws.

Recently, in two companion cases, *Economic Security Corp.*, 299 NLRB 554 (1990), and *Woodbury County Community Action Agency*, 299 NLRB 554 (1990), the Board held that private nonprofit community service corporations, which were established for the purpose of administering an array of federally subsidized antipoverty programs at a local level each qualified as a "political subdivision" of a state under Section 2(2) of the Act because each is governed by a tripartite board of directors, two-thirds of whom (representing a majority) are "responsible to the general electorate."⁷

In applying this standard here, we note that the applicable laws and the Employer's bylaws require, inter alia, that one-third of the board of directors be "representative of the poor elected according to demonstrate selection procedure." When the one-third "representative of the poor" board members are combined with the one-third of the board members who are "elected public officials . . . responsible to the general electorate" the result is that two-thirds of the Employer's board of directors are responsible to public officials or the general electorate under the holdings of *Economic Security and Woodbury*.

In these circumstances, we find the Employer to be a political subdivision of the State of Ohio. Accordingly, we do not have jurisdiction over the Employer and we will dismiss the petition.

ORDER

The petition is dismissed.

CHAIRMAN STEPHENS, dissenting.

For the reasons set forth in my dissent in *Woodbury County Community Action Agency*, 299 NLRB 554 (1990), I would assert jurisdiction and would not dismiss the petition.

¹ On the same date that review was granted the Board, sua sponte remanded the case to the Regional Director for the purpose of receiving additional evidence regarding the Employer's tripartite board of directors in order to determine the Sec. 2(2) status of the Employer under *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600 (1971).

² The three counties served by the Employer are Guernsey, Monroe, and Noble. The Employer was incorporated on November 6, 1965, by three individuals under Ohio nonprofit corporation laws. The Employer is also a tax-exempt corporation pursuant to the Internal Revenue Code, 26 U.S.C. § 501(c)(3).

³ Economic Opportunity Act, of 1964, 78 stat. 516, as amended; Community Services Block Grant Act, 42 U.S.C. § 9901, 9904(c) (Aug. 13, 1981).

⁴ Ohio Revised Code Sec. 122.66 to 122.70 (1984). See also Ohio Revised Code Title 17, ch. 1724.

⁵ See Community Services Block Grant Act, 42 U.S.C. § 9904 (c)(3).

⁶ At art. VI, sec. 6.3, the bylaws provide that each of the three counties the Employer serves be represented by two low-income members chosen in elections held at meetings of the counties' Policy Advisory Committees. Art. VI, sec. 6.4 describes the low-income members election process, specifying, inter alia, that voters "must show proof of residence in the appropriate county and must sign a statement certifying that he or she is low income as defined by the Community Services Administration." Further, sec. 6.4 provides for written ballots when there are two or more candidates for a seat on the board.

⁷ Sec. 2(2) of the Act provides that the term "employer" shall not include "any State or political subdivision thereof."